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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 189

JAMES MINOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals is reported at 398 F. 2d 511.

JURISDICTION

The judgment of the court of appeals was entered on July 3, 1968 (App. 32). Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to August 30, 1968. The petition was filed on August 27, 1968, and was granted on June 2, 1969 (App. 33; 395 U.S. 932). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

(1)

QUESTION PRESENTED

Whether the order form requirements of 26 U.S.C. 4705 compel illicit sellers of narcotics to disclose incriminatory information, in violation of the privilege against self-incrimination.

STATUTES AND RULES INVOLVED

The pertinent parts of the relevant statutes and rules (26 U.S.C. 4701-4705, 4721-4724, 4731-4732, 4771-4773, 4775; 26 C.F.R. 151.21-151.24, 151.41, 151.121-151.22, 151.124-151.126, 151.128-151.130, 151.141-151.146, 151.161, 151.181, 151.185, 151.201, 151.479) are set forth in the Appendix, *infra*, pp. 19-43.

STATEMENT

Petitioner waived trial by jury and was convicted by a judge of the United States District Court for the Southern District of New York on both counts of an indictment charging two sales of narcotics drugs not in pursuance of a written order form, in violation of 26 U.S.C. 4705(a). He was sentenced to concurrent five-year terms of imprisonment on each count (App. 19). The court of appeals affirmed his conviction (App. 22-31).

The evidence, which is not in dispute, shows that on the evening of January 9, 1967, on 117th Street in Manhattan, petitioner sold "a half piece of heroin" to undercover narcotics agent Guzman for \$325.00 (App. 8-9). A similar transaction was repeated on 117th Street on April 8th of the same year. On this occasion Guzman purchased five "bundles" of heroin for \$450.00 (App. 10). Agent Guzman testified that on

neither occasion did he give petitioner a written order for the narcotics he bought on a form provided by the Secretary of Treasury (App. 17).

SUMMARY OF ARGUMENT

Petitioner's claim that his privilege against self-incrimination was violated by the procedures leading to his conviction in this case is without merit. Utterly unlike the statutes involved in the *Marchetti-Grosso* line of cases, the Harrison Narcotics Act entirely forbids transactions in illicit drugs by unregistered dealers, and does not envision any circumstance, even a remote one, in which an individual can legitimize an otherwise unlawful transaction in such drugs for federal purposes by registering and paying a tax. The particular provision in question in this case, 26 U.S.C. 4705(a), flatly forbids the sale of narcotics without an order form, which is obtainable from the Secretary of Treasury only by registered—i.e. lawful—purchasers. A person who sells narcotics without having received an order form is under no obligation of any kind to report that transaction to the government. To secure conviction of the offense, the government must prove affirmatively, as it did in this case, that no order form passed. Even if a seller prosecuted under general provisions of law for failure to keep or fill out an order form he received might have a defense against that charge based on the Fifth Amendment—a question not presented in this case—a seller who has never received an order form is under no incriminatory pressure whatever.

It becomes apparent on closer analysis that petitioner's real complaint is that federal law does not

permit him to sell narcotic drugs under any circumstances and enforces its prohibition by severe criminal penalties. As this Court decided long ago, *e.g.*, *Nigro v. United States*, 276 U.S. 332, the propriety of such a prohibition in the course of regulating through taxation the dangerous business of dealing in narcotic drugs is beyond constitutional question. In substance and effect, the Harrison Act operates like any other statute regulating the legality of carrying on a trade or profession. A person who is found unqualified to practice the trade or who has never applied to do so has no defense thereby to a prosecution for his unlawful practice of it.

ARGUMENT

I

PUNISHMENT OF A SELLER OF NARCOTICS UNDER 26 U.S.C. 4705 (a) FOR A SALE MADE WITHOUT AN OFFICIAL ORDER FORM DOES NOT OFFEND THE SELLER'S FIFTH AMENDMENT RIGHT NOT TO BE COMPELLED TO INCRIMINATE HIMSELF

Petitioner was convicted of having twice sold heroin to a purchaser without having obtained from him a written order on a form issued for that purpose by the Secretary of Treasury, all in violation of 26 U.S.C. 4705(a). Petitioner challenges his conviction on the ground that compliance with the order form requirement of the Harrison Narcotics Act of 1914 would have incriminated both himself and the purchaser required to apply for the order form by the Act. He argues that the conviction is invalid under the principles set forth in *Marchetti v. United States*,

390 U.S. 39; *Grosso v. United States*, 390 U.S. 62; *Haynes v. United States*, 390 U.S. 85; *Leary v. United States*, 395 U.S. 6; and *United States v. Covington*, 395 U.S. 57. The test established by these cases to determine the validity of this defense is whether “‘[l]iteral and full compliance’ with all the statutory requirements would have entailed a very substantial risk of self-incrimination.” *Leary supra*, 395 U.S. at 26. See also *Grosso v. United States*, 390 U.S. at 65. It is our position that the Harrison Narcotics Act of 1914 (as amended) differs critically from the statutes considered in the above-cited cases and by its express terms presents no substantial risk of self-incrimination. We begin our argument by examining the statutory scheme.

A. THE PLAN OF THE STATUTE

The Harrison Narcotics Act of 1914 (as amended) (26 U.S.C. 4701-4736, 4771-4774) is a comprehensive tax scheme designed to limit dealings in dangerous narcotic drugs to necessary drugs and legitimate purposes. In enacting the statute Congress evinced a dual purpose. It intended to raise revenue through the imposition of an occupational tax on legitimate dealers in narcotic drugs (and by subsequent amendment, in 1919, through the imposition of an excise tax on transactions in narcotic drugs) and at the same time to inhibit undesirable uses of narcotic drugs. Congress clearly expressed its intention to use the taxing power not only to raise revenue but also to curtail the illicit and clandestine traffic in narcotic drugs. Thus, the House Committee explained (H. Rep. p. 3):¹

¹ H. Rep. No. 23, 63rd Congress 1st Sess. (1913).

It may be said that no individual has ever represented to the Committee on Ways and Means that the present extensive traffic in narcotics should be allowed to continue. The opinion of in fact every one except illicit dealers is that the traffic ought to be greatly diminished and *that narcotics should be confined to legitimate medical channels*. The only question at issue has been how best to do it. During the past five years the United States Opium Commission has made a thorough canvass of importers, manufacturers, physicians, and State officials, as well as of consumers, and as a result and in conjunction with a committee of representatives of the Department of State, the Treasury Department, and the Department of Justice, it has been decided by them that only by customs law and by the exertion of the Federal taxing power can the desired end be accomplished. In that opinion your committee concur. [Emphasis added.]

In order to achieve this policy, the original Harrison Narcotics Act of 1914, imposed an annual occupational tax on all persons who desired to handle narcotic drugs in the manner permitted by state and federal law. Under the provisions of the statute and the implementing regulations, any person who wishes to deal in (*i.e.*, import, manufacture, produce, compound, sell, deal in, dispense, or give away) narcotic drugs must register and pay an occupational tax at a rate prescribed by law (26 U.S.C. 4721-4722; 26 C.F.R. 151.21, 151.41).² Persons may not register under the

² The original Harrison Narcotics Act of 1914, 38 Stat. 785, provided for a uniform occupational tax of \$1 per annum per

provisions of the Act, or pay the occupational tax, unless they can satisfy the Bureau of Narcotics and Dangerous Drugs, after an investigation, that they are qualified under state law to conduct the business or activity for which registration is sought (26 C.F.R. 151.23-151.24).

In 1919, the Harrison Narcotics Act was amended to impose, in addition, a commodity excise tax at the rate of 1 cent per ounce or fraction thereof on narcotic drugs which have been imported into or produced in the United States, and are then sold or removed for consumption or sale (26 U.S.C. 4701, 26 C.F.R. 151.121, 151.125-151.126).³ When narcotic drugs are imported or produced and set aside for consumption or sale, the importer or producer must purchase from the district director of Internal Revenue adhesive stamps representing payment of the appropriate tax. The importer or producer then affixes these stamps to each package or container, according to its weight, prior to sale (26 U.S.C. 4707(a); 26 C.F.R. 151.128-151.130). Only persons registered as importers, manufacturers, producers or compounders under 26 U.S.C.

registrant. In 1919, varying rates were established, depending upon the registrant's occupation (*i.e.*, importers, wholesale dealers, retail dealers, physicians, etc.). 40 Stat. 1130. Subsequent amendments in 1928 (45 Stat. 867) and 1936 (49 Stat. 1745) altered the rates of the tax.

³ The occasion for the imposition of this tax was this court's decision in *United States v. Jin Fuey Moy*, 241 U.S. 394, which limited the effectiveness of the 1914 Act by holding that Section 8, punishing the possession of narcotics by "any person not registered" did not apply to a person who was not in the class required to register (see H. Rep. No. 767, 65th Cong., 2d Sess. (1918) p. 36).

4721—persons who by definition are qualified under state law to conduct business in narcotic drugs—may procure stamps by paying the excise tax (26 C.F.R. 151.130). No person is allowed to purchase, sell, dispense, or distribute narcotic drugs which are not in a stamped package or container (26 U.S.C. 4704(a)).

To ensure that legally processed drugs would not reach the illicit market, the Harrison Narcotics Act of 1914 made explicit the conditions under which the narcotic drugs could be sold. With the exception of drugs dispensed directly by physicians, or under written prescription, or for exportation, or sales to government and state officials (26 U.S.C. 4705(e)), all transfers of narcotics must be made pursuant to an official order form given to the transferor by the transferee (26 U.S.C. 4705(a); 26 C.F.R. 151.141). These order forms are available only upon application to the district director; the prospective purchaser must show, *inter alia*, that he is properly registered under the provisions of 26 U.S.C. 4722 and, therefore, qualified under state law to transact business in narcotic drugs (26 U.S.C. 4705(f); 26 C.F.R. 141.142–151.143). He is not required to name his prospective seller, however, in making his application (26 C.F.R. 151.143).

The order form is issued to the buyer, and sent by him to the seller, in triplicate (26 C.F.R. 151.161). The supplier-seller must enter upon the form the number and size of the stamped packages furnished on each item that is ordered and the date when each item is filled (26 C.F.R. 151.185). An order can be filled only by a seller who is lawfully registered under the Act (26 U.S.C. 4724; 26 C.F.R. 151.181). He is re-

quired to keep the original of the order form for two years, and to forward the triplicate to the government at the end of each month (26 U.S.C. 4705(d); 26 C.F.R. 151.201). The buyer receives the duplicate copy of the order form, and must retain it for two years (26 U.S.C. 4705(e)). Both copies, the buyer's and the vendor's, must be available for inspection by an authorized employee of the Treasury Department and any state official charged with the enforcement of the narcotics laws (26 U.S.C. 4705(d), (e), 4773; 26 C.F.R. 151.201, 151.479).

Enforcement of the order form provisions differs as between purchasers and sellers. A seller, such as petitioner, is liable to the penalties of 26 U.S.C. 7237 (b) if he makes a sale without the authority of an order form (26 U.S.C. 4705(a)). He commits no offense under Section 4705(a), however, if he receives an order form from his purchaser—however his purchaser may have obtained the form. Failure of a seller to fill in or preserve an order form is not punished specially under the narcotics statutes, but under general statutes, *e.g.*, 26 U.S.C. 7203, enforcing federal reporting and record-keeping requirements.⁴ No statu-

⁴ The statute's absolute prohibition on sales without an order form applies to those legally in possession of narcotics as well as to unregistered sellers. In both cases the requirement is designed to ensure that narcotics do not fall into the hands of illicit buyers who cannot satisfy the registration requirements of Section 4722. A seller's failure to fill out or retain the order form in no way affects the statutory purpose of limiting sales to purchasers who may legally deal in narcotic drugs. As the Supreme Court stated in *Nigro v. United States*, 276 U.S. 332, 350-351 where the issue was whether the written order form

tory presumption aids the government in a prosecution under Section 4705(a); it must prove affirmatively that no order form passed in order to secure conviction. Purchasers, on the other hand, are not made liable under Section 4705(a) for failure to use order forms (although such a transaction will doubtless prove illegal as to them under coordinate statutes such as the tax stamp provision). Should a purchaser use an order form fraudulently or improperly, however, he is punishable under 26 U.S.C. 4705(g) to the extent provided by 26 U.S.C. 7237(a). Sellers are not punishable under this provision.

Overall, it is evident, as this Court recognized last Term in *Leary, supra*, that while the Marijuana Tax Act contemplated that both registered and unregis-

provision applied to an unregistered seller who would not be allowed to register because he could not legally deal in narcotic drugs:

* * * Congress intended not only to punish sales without registration under the first section, but also to punish them without order forms from the purchaser to the seller, as a means of making it difficult for the unregistered seller to carry through his unlawful sales to those who could not get order forms. Thus an illegal unregistered seller might wish to clothe his actual unregistered sales with order forms that would give the transaction a specious appearance of legality. To punish him for this misuse of an order form is not to punish him for not recording his own crime. It is to punish him for an added crime—that of deceiving others into the belief that the sale is a lawful sale. There is no incongruity in increasing the criminal liability of the non-registered seller who fails to use an order form in his sales, or who misuses it. Both the registered and the non-registered seller are, under our construction of the section, punished for not using the order forms as the statute requires, or for misusing them. * * *

tered transferees could obtain order forms to complete a federally legal purchase of marijuana, Congress meant no such option to be available to purchasers of narcotic drugs under the Harrison Narcotics Act; no one but a registrant can obtain an order form legally. 395 U.S. at 21.⁵ The purpose of the statute is, through taxation of narcotic drugs, to confine this important, but highly dangerous, business to legitimate channels and legitimate uses, and to prohibit altogether any dealings of any kind in any narcotic drugs by those not authorized to do so. In contrast to the statutes involved in the *Marchetti-Grosso* line of cases, a person who acts illegally under state law cannot meet the requirements of federal law by registering and paying a tax. To be able to meet federal requirements he must be a legitimate dealer under state law.

B. ILLEGAL SELLERS OF NARCOTICS SUFFER NO DISABLING INCRIMINATORY PRESSURES THROUGH THE ORDER FORM REQUIREMENTS OF 26 U.S.C. 4705(B).

It follows from the above analysis that an unregistered seller's "‘literal and full compliance’ with all the statutory requirements" will *not* entail "a very substantial risk of self-incrimination." *Leary, supra*, 395 U.S. at 26. First, an unregistered seller of narcotics can comply fully with the federal scheme only in one way—by refraining from any sales. Unlike the statutes involved in the *Marchetti-Grosso* line of cases,

⁵ Petitioner recognizes in his brief that order forms may be issued only to "transferees who are registered" (p. 7). He fails to note that the statute also requires that order forms be used only in connection with a "lawful" business or "legitimate" profession (26 U.S.C. 4705(g)).

the Harrison Act does not permit an illicit transaction to be clothed with legality under federal law, even in appearance, by registration and payment of a tax. All such transactions are condemned. Second, except for the very unlikely case where his purchaser illegally obtains and presents a federal order form,⁶ an illegal seller is not required to report his sale. Reporting requirements apply only to sellers who do receive order forms, and then only after the order forms are received. All others are simply forbidden to sell; to establish guilt of that offense, the government must prove without their aid that they did sell without receiving a form. It is that conduct—sale without a form—and not failure to register, or pay a tax, or report, which the statute punishes. Finally, should the very unlikely occur and the seller receive an executed federal order form, he can no longer be punished under Section 4705(a). While he is then subject to reporting requirements, the unlikeliness of this situation makes it impossible to state that a “very substantial risk of self-incrimination” is involved in the statutory scheme as a whole. In any event, that claim is hardly open to persons who have received no form; and a failure to report is not punished under the narcotics statutes but under general law.

⁶ It is difficult to imagine situations in which persons legally in possession of order forms (and thus under obligation eventually to account for them to authorities) would wish to use them in a purchase on the illegal market. While theft of such forms is possible, the regulations severely limit the number of forms any but a manufacturer, importer, or wholesaler will have on hand at any given time (26 C.F.R. 151.143, 151.41(a)). We are unaware of any case in which this problem has arisen to date.

In sum, the fact that a prospective purchaser on the illegal market may be unable to obtain and present an order form for the narcotics he wishes to buy—and might have a self-incrimination defense if the statute made him criminally liable for failure to do so—creates no right in the seller to sell to him. He is free to refuse, and the statute unequivocally commands him to do so. What defenses might be available to sellers who do receive forms is irrelevant here. The only conduct charged is sale without an order form, which the government must affirmatively prove without the defendant's aid. It did so here. There was not even a remote possibility of incrimination involved; since petitioner was under no obligation to report anything to the federal government, he has no claim that its statutes forced him to reveal either state or federal offenses.

II

THE FEDERAL GOVERNMENT MAY PROPERLY LIMIT NARCOTICS TRANSACTIONS TO LEGITIMATE DEALERS AND NECESSARY DRUGS

On closer analysis, it becomes apparent that petitioner's real complaint is not that an illegal dealer cannot comply with federal law without incriminating himself. Rather, it is that an illegal dealer can never comply with federal law at all—doubly so with respect to heroin, in which, as petitioner states (Pet. Br. 22-23), Congress has outlawed virtually all transactions. The claim is thus that if Congress will not permit an illegal seller to register, or heroin to be sold, under the Act, it cannot punish him for his failure to follow

the forms of the Act in selling his heroin. But, in the main, these are questions this Court settled long ago. *Nigro v. United States*, 276 U.S. 332; *United States v. Doremus*, 249 U.S. 86; *Webb v. United States*, 249 U.S. 96. In using its taxing powers to confine narcotic drugs to legitimate channels, it is entirely appropriate for Congress to forbid dealings in any drugs, such as heroin, which it finds unnecessary for such use,⁷ to forbid dealings to all but a carefully selected class of individuals, and to enforce its prohibition by criminal penalties.

There is a legitimate federal interest in confining the narcotics trade to legitimate channels. The federal tax is not merely a device to impose federal sanctions on illegal dealers. In December 1967, there were 397,775 licensees registered under the Harrison Narcotics Act. Bureau of Narcotics, *Report on Traffic in Opium and other Dangerous Drugs* (for year ended December 31, 1967) p. 42.⁸ We are informed by the Bureau of Narcotics and Dangerous Drugs that in calendar year 1967, the federal government received revenue of \$1,274,425.93 under the registration and excise tax provisions of the Act, and in calendar year 1968 revenue of \$1,104,031.88. To be sure, the Act is also designed to prevent dealings in narcotics by non-

⁷ The prohibition on transactions in heroin, enacted in 1956, 70 Stat. 567, 572, can also be viewed as having been based upon the Commerce Clause of the Constitution, and plainly is authorized thereby. That it is enforced in the form of a taxing statute may make it somewhat more cumbersome than would necessarily be required, but that is no ground for finding constitutional infirmity.

⁸ There were only 83 registrants under the Marihuana Tax Act.

registered dealers. But that does not render the act involved improper as a tax measure.

Nor does it affect the validity of the order form (or stamped package) provision, designed to confine narcotics to legitimate channels, that illegitimate dealers cannot obtain such forms at all. *United States v. Doremus*, 249 U.S. 86; *Webb v. United States*, 249 U.S. 96. In sustaining the constitutionality of this section the Court said in the *Doremus* case (249 U.S. at p. 94):

* * * The provisions of § 2 [26 U.S.C. 4705], to which we have referred, aim to confine sales to registered dealers and to those dispensing the drugs as physicians, and to those who come to dealers with legitimate prescriptions of physicians. Congress, with full power over the subject, short of arbitrary and unreasonable action which is not to be assumed, inserted these provisions in an act specifically providing for the raising of revenue. Considered of themselves, we think they tend to keep the traffic above-board and subject to inspection by those authorized to collect the revenue. They tend to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely without paying the tax imposed by federal law. * * *

And in *Nigro v. United States*, 276 U.S. 332, this Court sustained the validity of the order form provision as being adapted to the enforcement of the tax even though an incidental motive of Congress in enacting this provision was to discourage harmful use of the drugs subject to the tax.

Under its plenary tax and commerce powers, Congress may place preconditions on the sale or purchase

of a regulated commodity. See *United States v. Wong Sing*, 260 U.S. 18, 21; cf. *Arrizon v. United States*, 224 F. Supp. 26 (S. D. Calif.). The transfer tax and order form provisions of the Harrison Act are such preconditions. There is no fundamental unfairness—and hence no violation of due process—in establishing a class of individuals who cannot meet or satisfy the preconditions and then punishing them criminally for engaging in the regulated activity without the necessity authority.

In substance and effect, then, the Harrison Act operates like any other statute regulating eligibility for carrying on a trade or profession. Certainly no one charged, for instance, with practicing law or medicine without a license, or operating a trucking company without a certificate of public convenience and necessity, could be heard to raise as a defense that it would be fundamentally unfair to prosecute him because his lack of qualification for the calling made it impossible for him to obtain the license or certificate.⁹ Neither can petitioner complain because he is being subjected to the ordinary consequences of selling narcotics without having obtained an order form. Once he proceeded to engage in activities that only those who can satisfy

⁹ The analogy to licensing statutes is, we believe, apt. The order form does perform the function of a license. In *Nigro v. United States*, *supra*, 276 U.S. at 345, the Court viewed the objective of the order form provisions as effecting "a kind of registration of lawful purchasers, in addition to one of lawful sellers * * *." Chief Justice Taft, for the Court, continued: "[t]he order form is not a mere record of a past transaction—it is a certificate of legality of the transaction being carried on * * *." 276 U.S. at 351.

the prerequisites of the statute may perform, he exposed himself to punishment. Even though he was not within the class eligible to comply with the Act's criteria, he had no privilege to go ahead and sell heroin without obtaining an order form from the purchaser. His act in doing so made him subject to punishment on proof that he did the act which the statute forbids.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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SEPTEMBER 1969.

APPENDIX

26 U.S.C. 4701 provides:

IMPOSITION OF TAX

(a) *Rate.*

There shall be imposed an internal revenue tax upon narcotic drugs, produced in or imported into the United States, and sold, or removed for consumption or sale, at the rate of 1 cent per ounce, and any fraction of an ounce in a package shall be taxed as an ounce. The tax imposed by this subsection shall be in addition to any import duty imposed on narcotic drugs.

(b) *By whom paid.*

The tax imposed by subsection (a) shall be paid by the importer, manufacturer, producer, or compounder.

26 U.S.C. 4702 provides in pertinent part:

EXEMPTIONS.

(a) *Exceptions from certain provisions authorized for preparations of no addictive quality or of minor addictive quality.*

* * * * *

(b) *Decocainized coca leaves.*

The provisions of this subpart and sections 4721 to 4726, inclusive, shall not apply to decocainized coca leaves or preparations made therefrom, or to other preparations of coca leaves which do not contain cocaine.

(c) *Government and State officials.*

(1) *Stamping drugs.*

Officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the exercise of their official duties engage in any

of the business described in sections 4721 to 4726, inclusive, shall not be required to stamp narcotic drugs, as prescribed in this subpart, but their right to this exemption shall be evidenced in such manner as the Secretary or his delegate may by regulations prescribe.

* * * * *

26 U.S.C. 4703 provides:

AFFIXING OF STAMPS.

The stamps provided in section 4771(a)(1) for narcotic drugs shall be so affixed to the bottle or other container as to securely seal the stopper, covering, or wrapper thereof.

26 U.S.C. 4704 provides:

PACKAGES.

(a) General requirement.

It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; and the absence of appropriate taxpaid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found.

(b) Exceptions in case of registered practitioners.

The provisions of subsection (a) shall not apply—

(1) Prescriptions.

To any person having in his or her possession any narcotic drugs or compounds of narcotic drug which have been obtained from a registered dealer in pursuance of a written or oral prescription referred to in section 4705(c)(2), issued for legitimate medical uses by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4722; and where the bottle or other container in which such narcotic drug or compound of a narcotic drug may be put up by the dealer upon said prescription bears the name and registry num-

ber of the druggist, and name and address of the patient, serial number of prescription, and name, address, and registry number of the person issuing said prescription; or

(2) Dispensations direct to patients.

To the dispensing, or administration, or giving away of narcotic drugs to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice, and where said drugs are dispensed or administered to the patient for legitimate medical purposes, and the record kept as required by this subpart of the drugs so dispensed, administered, distributed, or given away.

26 U.S.C. 4705 provides:

ORDER FORMS.

(a) *General requirement.*

It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate.

(b) *Exception in case of Virgin Islands.*

The President is authorized and directed to issue such Executive orders as will permit those persons in the Virgin Islands of the United States, lawfully entitled to sell, deal in, dispense, prescribe, and distribute narcotic drugs, to obtain said drugs from persons registered under section 4722 within the continental United States for legitimate medical purposes, without regard to the order forms described in this section.

(c) *Other exceptions.*

Nothing contained in this section, section 4735, or section 4774 shall apply—

(1) Use of drugs in professional practice.

To the dispensing or distribution of narcotic drugs to a patient by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4722, in the course of his professional practice only: *Provided*, That such physician, dentist, veterinary surgeon, or other practitioner shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, veterinary surgeon or other practitioner shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in section 4773.

(2) Prescriptions.

(A) To the sale, dispensing, or distribution of narcotic drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4722: *Provided, however*, That (i) such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, veterinary surgeon, or other practitioner who shall have issued the same; (ii) that such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials mentioned in section 4773.

(B) In lieu of a written prescription for such narcotic drugs or compounds of a narcotic drug which the Secretary or his delegate, in his discretion (after considering any views, expressed on the subject by the Surgeon General, United States Public Health Service; the Commissioner, United States Food and Drug Ad-

ministration; the respective heads of State narcotic law enforcement agencies; and the respective secretaries of national associations representing (i) narcotic drug manufacturers, (ii) physicians, and (iii) pharmacists), shall find and by regulation designate to possess relatively little or no addiction liability, the sale, dispensing, or distribution may be made by a dealer to a consumer upon oral prescription of a duly registered physician, dentist, veterinary surgeon, or other practitioner, which oral prescription is reduced promptly to writing, and the writing filed and preserved by the dealer for a period of two years from the date on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials mentioned in section 4773. In issuing an oral prescription, the prescriber shall furnish the dealer with the same information as is required by law or regulation in case of a written prescription for narcotic drugs or compounds of a narcotic drug except for the written signature of the prescriber, and the dealer who fills such prescription shall be required to inscribe such information on the written record of the prescription made, filed and preserved by him, and shall inscribe on the label of the container of the narcotic drug or compound of a narcotic drug the same information as is required in filling a written prescription. An oral prescription shall not be refilled.

(C) If the Secretary or his delegate shall subsequently determine that a narcotic drug or a compound of a narcotic drug, to which the oral prescription procedure described in the preceding subparagraph has been made applicable, possesses a degree of drug addiction liability that, in his opinion, results in abusive use of such procedure, he shall by regulation publish the determination in the Federal Reg-

ister. The determination shall be final, and after the expiration of a period of six months from the date of its publication, the oral prescription procedure described in the preceding subparagraph shall cease to apply to the particular narcotic drug or to the particular compound of a narcotic drug which is the subject of the determination.

(3) **Exportation.**

To the sale, exportation, shipment, or delivery of narcotic drugs by any person within the United States or any Territory or the District of Columbia of any of the insular possessions of the United States to any person in any foreign country, regulating their entry in accordance with such regulations for importation thereof into such foreign country as are prescribed by said country, such regulations to be promulgated from time to time by the Secretary of State.

(4) **Government and State officials.**

To the sale, barter, exchange, or giving away of narcotic drugs to any officer of the United States Government or of any State, Territorial district, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Government, State, Territorial, district, county, or municipal or insular hospitals or prisons.

(d) *Preservation.*

Every person who shall accept any order required under subsection (a), and in pursuance thereof shall sell, barter, exchange, or give away narcotic drugs, shall preserve such order for a period of 2 years in such a way as to be readily accessible to inspection by any officer or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section 4773.

(e) *Duplicates.*

Every person who shall give an order as provided in this section to any other person for narcotic drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Secretary or his delegate, and in case of the acceptance of such order shall preserve such duplicate for said period of 2 years in such a way as to be readily accessible to inspection by the officers, employees, and officials mentioned in section 4773.

(f) *Supply.*

The Secretary or his delegate shall cause suitable forms to be prepared for the purposes mentioned in this section, and shall cause the same to be distributed to each internal revenue district for sale to those persons who shall have registered and paid the special tax as required by sections 4722 and 4721; and he shall require that the same be sold only to persons who have registered and paid the special tax as required by said sections. The price at which such forms shall be sold shall be fixed by the Secretary or his delegate but shall not exceed the sum of \$1 per hundred. The Secretary or his delegate shall cause to be kept accounts of the number of such forms sold, the names of the purchasers and the number of such forms sold to each of such purchasers. Whenever any of such forms are sold, the Secretary or his delegate shall cause the name of the purchaser thereof to be plainly written or stamped thereon before delivering the same; and no person other than such purchaser shall use any of said forms bearing the name of such purchaser for the purpose of procuring narcotic drugs, or furnish any of the forms bearing the name of such purchaser to any person with intent thereby to procure the shipment or delivery of narcotic drugs.

(g) *Unlawful use.*

It shall be unlawful for any person to obtain by means of said order forms narcotic drugs for any purpose other than the use, sale, or distribution thereof by him in the conduct of a lawful business in said drugs or in the legitimate practice of his profession.

(h) *Cross reference.*

For issuance of order forms in Puerto Rico and the Trust Territory of the Pacific Islands, see section 4735(a). For issuance of order forms in Guam, see section 4735(d).

26 U.S.C. 4721 provides:

IMPOSITION OF TAX.

On or before July 1 of each year every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away narcotic drugs shall pay the special taxes hereinafter provided. Every person upon first engaging in any of such activities shall immediately pay the proportionate part of the tax for the period ending on the following June 30.

(1) Importers, manufacturers, or producers.

Importers, manufacturers, producers, or compounders, lawfully entitled to import, manufacture, produce, or compound narcotic drugs, \$24 a year;

(2) Wholesale dealers.

Wholesale dealers, lawfully entitled to sell and deal in narcotic drugs, \$12 a year;

(3) Retail dealers.

Retail dealers, lawfully entitled to sell and deal in narcotic drugs, \$3 a year;

(4) Physicians, dentists, veterinary surgeons, and other practitioners.

Physicians, dentists, veterinary surgeons, and other practitioners, lawfully entitled to distribute, dispense, give away, or administer narcotic drugs to patients upon whom they in the course of their professional practice are in attendance, \$1 a year or fraction thereof during which they engage in any of such activities;

(5) Persons engaged in research, instruction, or analysis.

Persons not registered as an importer, manufacturer, producer, or compounder and lawfully entitled to obtain and use in a laboratory narcotic drugs for the purpose of research, instruction, or analysis shall pay \$1 a year, but such persons shall keep such special records relating to receipt, disposal, and stocks on hand of narcotic drugs as the Secretary or his delegate may by regulation require. Such special records shall be open at all times to the inspection of any duly authorized officer or employee of the Treasury Department.

(6) Persons not otherwise taxed.

For a tax of \$1 a year on persons not otherwise taxed, dispensing preparations and remedies of limited narcotic content, see section 4702 (a).

(7) Persons in Canal Zone.

For authority of the President to issue Executive orders providing for the imposition of a special tax upon all persons in the Canal Zone, who produce, import, compound, deal in, dispense, distribute, sell, or give away narcotic drugs, see section 4735 (b).

26 U.S.C. 4722 provides:

REGISTRATION.

On or before July 1 of each year every person who engages in any of the activities enumerated in section 4721 shall register with the Secretary or his delegate his name or style, place of business and place or places where such business is to be carried on, and every person upon first engaging in any such activities shall immediately make like registration.

26 U.S.C. 4723 provides:

POSSESSION BY PERSON NOT REGISTERED.

The possession of any original stamped package containing narcotic drugs by any person who has not registered and paid special taxes as

required by sections 4721 and 4722 shall be prima facie evidence of liability to such special tax.

26 U.S.C. 4724 provides:

§ 4724. Unlawful acts in case of failure to register and pay special tax.

(a) *Trafficking.*

It shall be unlawful for any person required to register under the provisions of this subpart or section 4702(a) to import, manufacture, produce, compound, sell, deal in, dispense, distribute, administer, or give away narcotic drugs without having registered and paid the special tax imposed by this subpart or section 4702(a).

(b) *Transportation.*

Except as otherwise provided in this subsection, it shall be unlawful for any person to send, ship, carry, or deliver narcotic drugs from any State or Territory or the District of Columbia, or any insular possession of the United States, into any other State or Territory or the District of Columbia, or any insular possession of the United States. Nothing contained in this subchapter shall apply—

(1) to any person who shall have registered and paid the special tax as required by sections 4721 and 4722;

(2) to common carriers engaged in transporting narcotic drugs;

(3) to any employee acting within the scope of his employment for any person who shall have registered and paid the special tax as required by sections 4721 and 4722, or to any contract carrier or other agent acting within the scope of his agency for such registered person;

(4) to any person who shall deliver any such drug which has been prescribed or dispensed by a physician, dentist, veterinarian, or other practitioner required to register under the terms of this subpart or section 4702(a) and employed

to prescribe for the particular patient receiving such drug;

(5) to any person carrying any narcotic drug or compound of a narcotic drug which has been obtained by the person from a registered dealer in pursuance of a written or oral prescription referred to in section 4705(c)(2), issued for legitimate medical uses by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4722, if the bottle or other container in which such drug or compound of a narcotic drug is carried bears the name and registry number of the druggist, serial number of prescription, name and address of the patient, and name, address, and registry number of the person issuing such prescription;

(6) to any person carrying any such drug which has been obtained by the person as a patient from a registered physician, dentist, or other practitioner in the course of his professional practice if such drug is dispensed to the patient for legitimate medical purposes; or

(7) to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties.

(c) Possession.

It shall be unlawful for any person who has not registered and paid the special tax provided for by this subpart or section 4702(a) to have in his possession or under his control narcotic drugs; and such possession or control shall be presumptive evidence of a violation of this subsection and subsection (a), and also a violation of the provisions of sections 4721 and 4722: *Provided*, That this subsection shall not apply to any employee of a registered person, or to a nurse under the supervision of a physician, dentist, or veterinary surgeon registered under this subpart or section 4702(a), having such possession or control by virtue of his employment or occupation and not on his own account; or to

the possession of narcotic drugs which has or have been prescribed in good faith by a physician, dentist, or veterinary surgeon registered under this subpart or section 4702(a); or to any United States, State, county, municipal, District, Territorial, or insular officer or official who has possession of any of said drugs, by reason of his official duties; or to a warehouseman holding possession for a person registered and who has paid the taxes under this subpart and sections 4701 to 4707, inclusive; or to common carriers engaged in transporting such drugs: *Provided further*, That it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment, or other writ or proceeding laid or brought under this subpart or sections 4701 to 4707, inclusive; and the burden of proof of any such exemption shall be upon the defendant.

26 U.S.C. 4731 provides in pertinent part:

DEFINITIONS.

(a) *Narcotic drugs.*

The words "narcotic drugs" as used in this part shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, isonipecaine, coca leaves, and opiate;

(2) Any compound, manufacture, salt, derivative, or preparation of opium, isonipecaine, coca leaves, or opiate;

(3) Any substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clauses (1) and (2);

except that the words "narcotic drugs" as used in this part shall not include decocainized coca

leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

(b) *Person.*

The word "person", as used in sections 4701 to 4707, inclusive, and sections 4721 to 4726, inclusive, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person.

(c) *Importer, manufacturer, or producer.*

Every person who imports, manufactures, compounds, or otherwise produces for sale or distribution narcotic drugs shall be deemed to be an importer, manufacturer, or producer.

(d) *Wholesale dealer.*

Every person who sells, or offers for sale, any of said drugs in the original stamped packages as provided in section 4704(a) shall be deemed a wholesale dealer.

(e) *Retail dealer.*

Every person who sells or dispenses from original stamped packages as provided in section 4704 (a) shall be deemed a retail dealer: *Provided*, That the office, or if none, the residence, of any person shall be considered, for the purpose of this part, except sections 4711 to 4715, inclusive, his place of business.

* * * * *

26 U.S.C. 4732 provides:

RECORDS, STATEMENTS, AND RETURNS.

(a) *Books and monthly returns of importers, manufacturers, and wholesale dealers.*

Importers, manufacturers, and wholesale dealers shall keep such books and records and render such monthly returns in relation to the transactions in narcotic drugs as the Secretary or his delegate may by regulations require.

(b) Returns by registrants of drugs received.

Any person who shall be registered with the Secretary or his delegate under the provisions of section 4722 shall, whenever required so to do by the Secretary or his delegate, render to the official in charge of the internal revenue district a true and correct statement or return, verified by affidavit, setting forth the quantity of narcotic drugs received by him in said internal revenue district during such period immediately preceding the demand of the Secretary or his delegate, not exceeding 3 months, as the Secretary or his delegate may fix and determine; the names of the persons from whom the said drugs were received; the quantity in each instance received from each of such persons; and the date when received.

26 U.S.C. 4771 provides in pertinent part:

STAMPS.

(a) Method of payment.

(1) Stamps.

The taxes imposed by sections 4701 and 4741 shall be represented by appropriate stamps, to be provided by the Secretary or his delegate.

* * * * *

26 U.S.C. 4772 provides in pertinent part:

EXEMPTION FROM TAX AND REGISTRATION.

(a) Employees.

No employee of any person who has registered and paid a special tax as required in sections 4721 to 4726, inclusive, or sections 4751 to 4757, inclusive, acting within the scope of his employment shall be required to register and pay such special taxes.

(b) Government and State officials.

Officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the

exercise of their official duties engage in any of the businesses described in section 4741 or activities enumerated in sections 4751 and 4752, shall not be required to register, nor pay special tax, but their right to this exemption shall be evidenced in such manner as the Secretary or his delegate may by regulations prescribe.

* * * * *

26 U.S.C. 4773 provides:

INSPECTION OF RETURNS, ORDER FORMS, AND PRESCRIPTIONS.

The duplicate order forms and the prescriptions, including the written record of oral prescriptions, required to be preserved under the provisions of section 4705 (c)(2) and (e), and the order forms and copies thereof and the prescriptions and records required to be preserved under the provisions of section 4742, in addition to the statements or returns filed in the office of the official in charge of the internal revenue district under the provisions of sections 4732(b) or 4754, shall be open to inspection by officers and employees of the Treasury Department duly authorized for that purpose, and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the production of marihuana or regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs or marihuana. The Secretary or his delegate is authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in the office of any official in charge of an internal revenue district to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States as shall be entitled to inspect the

said statements or returns filed in the office of the official in charge of the internal revenue district, upon the payment of a fee of \$1 for each 100 words or fraction thereof in the copy or copies so requested.

26 U.S.C. 4775 provides:

LIST OF SPECIAL TAXPAYERS.

The Secretary or any officer or employee designated by him is authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in the respective internal revenue districts as special taxpayers under the provisions of sections 4721 to 4726, inclusive, section 4702 (a), section 4751, or section 4752, upon payment of a fee of \$1 for each 100 names or fraction thereof in the copy so requested.

26 C.F.R. 151.21 provides:

PERSONS LIABLE.

Liability to payment of special tax and registration attaches to every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, administers, or gives away narcotics. As to the tax rates applicable to a person engaged in one or more of the foregoing activities, see § 151.41.

26 C.F.R. 151.22 provides:

MANNER AND TIME OF REGISTRATION.

Every person required to register shall execute and file with the district director for the internal revenue district in which he proposes to engage in any activity involving use of narcotic drugs, an application for registration on Form 678 and pay the special tax or taxes enumerated in § 151.41. Form 678 shall be executed by new applicants and approved by the district director before the activity is commenced. Renewal applications shall be executed and filed on or before the succeeding July 1, and annually thereafter as long as liability is

incurred. Form 678 may be obtained from the district director. For the purpose of the special tax imposed by section 4721, Form 678 shall be considered a return.

26 C.F.R. 151.23 provides:

INVESTIGATION OF APPLICANTS.

(a) All new applications on Form 678 shall be referred by the district director to the appropriate narcotic regional director for investigation, report, and recommendation. Renewal applications on Form 678 shall also be referred by the district director to the appropriate narcotic regional director for investigation, report and recommendation, if the district director is in doubt as to the applicant's being lawfully entitled to engage in the activity for which he seeks registration.

(b) In the case of applications which have been so referred, the district director shall not issue a special tax stamp in connection with any registration until information has been submitted to him, by the narcotic regional director, that the applicant is properly licensed or otherwise lawfully entitled to engage in the activity in the internal revenue district in which he seeks registration.

(c) All applications for registration that are referred to the regional director shall be returned by him to the district director with recommendation for approval or disapproval and, in case of disapproval, with a statement annexed concerning applicant's lack of license or qualification, to lawfully engage in the activity for which registration is sought. The application together with any required statement shall be returned to the district director within 10 days from date of receipt of the application by the regional director, unless a longer time shall be required within which to complete an investigation. In the latter event the regional director shall, upon or before the ex-

piration of the said 10 days, so notify the district director stating the estimated additional time required.

26 C.F.R. 151.24 provides:

EVIDENCE OF QUALIFICATION.

The application of every person shall show that, under the laws of the jurisdiction in which he is operating or proposes to operate, he is legally qualified or lawfully entitled to engage in the activities for which registration is sought.

26 C.F.R. 151.41 provides in pertinent part:

RATES OF TAX.

(a) Persons subject to tax are divided into classes as shown by the table following:

Class	Annual tax rate	Persons liable
I.....	\$24	Importers, manufacturers, producers, compounders.
II.....	12	Wholesale dealers.
III.....	3	Retail dealers.
IV.....	1	Physicians, dentists, veterinary surgeons and other practitioners.
V ¹	1	Manufacturers of and dealers in exempt preparations (including dispensing physicians).
VI.....	1	Persons not registered in Class I, but lawfully entitled to obtain and use in a laboratory narcotics for the purpose of research, instruction or analysis.

¹ Persons paying tax in any of the Classes I to IV, inclusive, are not required to pay tax in Class V on account of manufacture or sale of exempt preparations.

26 C.F.R. 151.121 provides:

SCOPE OF TAX.

(a) The tax attaches to all narcotics domestically manufactured or produced, and all narcotics imported in crude or manufactured form.

(b) A new tax liability will attach whenever a new derivative, compound, or preparation is produced, whether or not tax has been paid on the component ingredients or parts thereof. Thus imported opium is subject to one tax, morphine produced in this country from such imported opium is subject to another tax, a preparation manufactured by the use of such morphine also will be subject to tax, and so on.

(c) Preparations and remedies coming with-

in the provisions of section 4702 are not subject to the tax. See §§ 151.421 to 151.423.

26 C.F.R. 151.122 provides:

REPACKING.

(a) Repacking narcotics is production within the intent of section 4701, and narcotics so produced are taxable, regardless of any tax previously paid thereon.

(b) Retail druggists may, under the conditions indicated in § 151.43, fill prescriptions and supply solutions for office practice without payment of tax on the narcotics furnished in such manner.

26 C.F.R. 151.124 provides:

PERSONS LIABLE.

The tax on imported narcotics is to be paid by the importer. The tax on narcotic drugs domestically manufactured, produced, or compounded, is payable by the manufacturer, producer, or compounder.

26 C.F.R. 151.125 provides:

TIME OF PAYMENT.

(a) *Importations.* The tax on imported narcotics must be paid before removal from customs custody.

(b) *Manufactured products.* The tax on narcotics domestically manufactured, produced, or compounded must be paid before sale or removal for consumption or sale.

26 C.F.R. 151.126 provides:

AMOUNT OF TAX.

The tax is 1 cent per ounce or fraction thereof in each package constituting a taxable unit. See § 151.127. For instance, the tax on a package containing $5\frac{1}{2}$ ounces will be 6 cents. The tax on a package containing less than 1 ounce will be 1 cent. The tax is measured by the entire drug content of a taxable package or con-

tainer, not by the weight of the narcotic content therein.

26 C.F.R. 151.128 provides:

MANNER OF PAYMENT.

The tax is paid by attachment to the package forming the taxable unit of a stamp or stamps in sufficient amount. One or more stamps of an appropriate size shall be so affixed as to securely seal the package. In the case of bottles, cans, or other containers with stoppers, lids, or other removable closing devices, the stamp or stamps shall seal the stopper, lid, or other closing device at two opposite points.

26 C.F.R. 151.129 provides:

KINDS OF STAMPS.

Adhesive strip stamps are issued in the following denominations and sizes:

<i>Sizes</i>	<i>Denominations</i>
1½ by ¼ inch-----	1 cent.
2½ by ⅜ inch-----	1 and 2 cents.
4 by ½ inch-----	1, 2, 5, 6, 8, 10, and 16 cents.
6 by ¾ inch-----	1, 2, 5, 6, 8, 10, 16, 25, and 40 cents, and \$1 and \$1.28.

26 C.F.R. 151.130 provides:

PROCUREMENT OF STAMPS.

Stamps for affixing to packages or containers of narcotics will be furnished only on requisition of persons registered in Class I. The stamps are not transferable except to a successor in business who has registered and paid tax in Class I at the same location, but unused stamps may be redeemed. See § 151.461. The requisition shall be made on Form 786. Blank requisition forms may be procured from district directors. District directors will preserve the requisitions and keep a record of the total quantity of stamps secured by each person making requisitions.

26 C.F.R. 151.141 provides:

WRITTEN ORDER REQUIRED.

Except as otherwise provided, order forms are required for all sales or other dispositions of narcotic drugs.

26 C.F.R. 151.142 provides:

BY WHOM PROCURABLE.

Blank forms may be obtained only by persons who are duly qualified and registered under section 4722 of certified as purchasing exempt officials (see §§ 151.222 and 151.223) and have legitimate use therefor. Order forms will not be furnished to persons registered in Class V who are not manufacturers.

26 C.F.R. 151.143 provides:

MANNER OF PROCUREMENT.

A person desiring and entitled to receive order forms should submit requisition on Form 679 to the district director of the internal revenue district in which he is doing business. The order forms are issued in books each containing 10 sets of original, duplicate, and triplicate forms. Blank requisitions, Form 679, may be obtained from the district director and a replacement requisition blank is included in each book of forms. Each requisition shall show the taxpayer's name, address, registry number, and class, and the number of books of order forms desired. Unless the taxpayer is registered in Class I or II, only one book of order forms will be furnished on each requisition. A charge of 10 cents is made for each book of order forms issued to other than exempt officials, and the requisition should be accompanied by remittance of the proper amount in the form of a check, cash, or money order. For procurement of order forms by exempt officials, see § 151.224.

26 C.F.R. 151.144 provides:

§ 151.144 SIGNING OF REQUISITIONS.

Generally, requisitions for order forms shall be signed by the same person or persons signing the application for registration (see § 151.26). However, they may be signed by another person authorized by power of attorney previously filed with and approved by the district director. The power of attorney shall be executed on Form 1315, or a substantially similar form, in the same manner as applications for registration, shall show the signature of the person thereby authorized to sign requisitions for order forms, and shall affirm that the signature so shown is his signature.

26 C.F.R. 151.145 provides:

SIGNATURES TO BE COMPARED.

Upon receipt by the district director of a requisition for order forms, the signature on such requisition shall be compared with that appearing on the application for registration or in the power of attorney (see § 151.144). Unless the district director is satisfied that the requisition is authentic, it will not be honored.

26 C.F.R. 151.146 provides:

PROCEDURE REGARDING ORDER FORMS.

Upon receipt of a properly executed requisition, accompanied by a sum sufficient to cover the cost of the order forms desired, the district director will issue the order forms requested. Before issuing the order forms the district director will cause to be shown thereon in a legible and permanent manner the name, address, registry number, and class number or numbers of the person to whom they are supplied, also the date of issuance and his signature or his name and the initials of the issuing employee.

26 C.F.R. 151.161 provides:

EXECUTION OF FORMS.

(a) Order forms are issued in triplicate and shall be executed in triplicate. They are arranged to permit the execution of the original, duplicate, and triplicate simultaneously by means of interleaved carbon sheets. The original and the triplicate, together with the intervening carbon sheet, must be furnished to the consignor, but shall not leave the possession of the person executing the order until the duplicate is made.

(b) The attachment of extra sheets to order forms is not permitted. If one order form is not sufficient to include all the items of an order, an additional form or forms shall be used. The order forms are intended solely to cover dispositions of taxable narcotic drugs and preparations to registered persons. They shall not in any case be used as prescriptions.

26 C.F.R. 151.181 provides:

WHO MAY FILL.

Except as otherwise provided in this part, order forms may be filled only by a registered importer, manufacturer, producer, compounder, or wholesale dealer (a Class I or II registrant).

26 C.F.R. 151.185 provides:

FILLING OF ORDERS.

The consignor shall enter upon the order form the number and size of the stamped packages furnished on each item and the date when each item is filled. When an order cannot be filled in its entirety, it may be filled in part and the balance supplied by additional shipments within 60 days from the date of the order form. A notation, covering each shipment, showing the actual quantities supplied and the date of delivery, shall be made by the vendor on the original and triplicate and by the vendee on the duplicate. The drugs shall be shipped only to

the person and at the location specified by the district director on the face of the order form: *Provided, however,* That orders for narcotic drugs and preparations submitted on official order forms by authorized purchasing officers of the Armed Services Medical Procurement Agency for delivery to armed services establishments within the United States may be shipped to locations other than the address specified on the order form, and in partial shipments at different times not to exceed six months from the date of the order, as designated by the procurement officer when submitting the order.

26 C.F.R. 151.201 provides:

FILING OF ORDER.

(a) The duplicate shall be kept on file by the vendee for at least two years. The original shall be filed and preserved for a like period by the vendor. The triplicate shall be forwarded by the vendor at the close of the month during which it is filled to the regional director for the district in which the vendor is located. Where an order is only partially filled during one month and other items thereon are to be supplied during a following month, as provided in § 151.185, the triplicate should be retained by the vendor and forwarded to the regional director at the close of the month during which the final shipment is made or during which the 60-day validity period expires.

(b) Any order form which is improperly executed or mutilated so as to make it unusable, shall not be destroyed, but all copies shall be kept on file with the other duplicates.

26 C.F.R. 151.479 provides:

RECORDS OPEN TO INSPECTION.

(a) Any officer, agent, or employee of the Treasury Department and the Department of Justice authorized to enforce the provisions of subchapter A, chapter 39, relating to narcotic

drugs, and any officer of any State, Territory, the District of Columbia, or insular possession of the United States charged with the enforcement of any law or municipal ordinance relating to the traffic in narcotic drugs, shall have authority to examine the books, papers, and records kept pursuant to the regulations in this part, and may require the production thereof.

(b) All order forms, duplicate forms, prescription records, returns, and inventories required under the provision of subchapter A, chapter 39, relating to narcotic drugs, or the regulations in this part to be kept on file shall be kept so that they can be readily inspected.